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Case No. 83-475

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

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RONALD EARL STAHL, ET AL.  
Petitioners,

vs.

THE STATE OF OKLAHOMA,  
Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT  
OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

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RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

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December, 1983

QUESTION PRESENTED FOR REVIEW

Whether the First Amendment immunizes newspersons from arrest and prosecution for trespass when they have violated a state law prohibiting such while reporting the arrest of demonstrators who also had trespassed upon private property.

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On Petition for a Writ of Certiorari to the Court  
of Criminal Appeals of the State of Oklahoma

RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

The Respondent, State of Oklahoma, by and through Michael C. Turpen, Attorney General of the State of Oklahoma, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Opinion of the Court of Criminal Appeals of the State of Oklahoma entered on June 22, 1983 and which was corrected on July 22, 1983.

### OPINION BELOW

The Opinion of the Oklahoma Court of Criminal Appeals is reported at 665 P.2d 839 (Okla.Cr. 1983).

### JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S. § 1257(3).

### RELEVANT CONSTITUTIONAL AND

#### STATUTORY PROVISIONS

The First Amendment to the Constitution of the United States provides, in pertinent part:

"No State shall . . . deprive any person of life, liberty or property, without due process of law. . . ."

Title 21 O.S.1971, § 1835(a) provided:

Whoever shall willfully or maliciously enter the garden, yard, or enclosed field of another after being expressly forbidden to do so by the owner or occupant thereof shall be deemed guilty of trespass and upon conviction thereof shall be fined in any sum not to exceed Twenty-five Dollars (\$25.00); provided, that anyone who willfully or maliciously enters any such garden, yard, or field, and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by confinement in the

county jail for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment.

Title 21 O.S.1971, § 92 provided:

"The term 'willfully' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate law, or to injure another, or to require any advantage."

#### STATEMENT OF THE CASE

Ronald Earl Stahl and five (5) other persons (hereinafter referred to as the "Petitioners") were convicted of the crime of Trespass After Being Forbidden in violation of 21 O.S.1971, § 1835 in the District Court of Rogers County, State of Oklahoma. The Petitioners, who were represented by counsel, waived their right to a jury trial and the case was tried to the Court. The Court found the Petitioners guilty and fined each of them Twenty-five Dollars (\$25.00) plus costs.

The facts which were presented to the Court revealed that on June 2, 1979 a group of demonstrators who opposed the construction of a nuclear power facility, entered and occupied the grounds (which was known as Black Fox Station), a rural area north of Tulsa, Oklahoma. The Black Fox Station was owned by the Public Service Company



of Oklahoma (PSO). PSO and two rural cooperatives had agreed to develop nuclear power generating facilities on this area.

During the course of the demonstration 339 protestors crossed the fenced boundary lines and were arrested. Nine (9) newsmen, including the Petitioners in this case, were arrested after they also crossed the fence boundary line. Prior to the crossing of this line, the Petitioners were advised by a PSO official "You are trespassing on private property and are subject to arrest" (Tr. 387). The Petitioner Stahl also testified that he observed a sign posted on the fence which he believed stated "Private Property. Trespassers subject to arrest." (Tr. 392). Stahl claimed that they crossed the fenced boundary line in order to witness and report the protest and arrest of the demonstrators (Tr. 386, 390).

#### REASONS WHY THE WRIT SHOULD BE DENIED

No question exists as to the fact that the Petitioners violated the criminal trespass statutes of the State of Oklahoma since they entered upon land of PSO after being expressly forbidden to do so. The Petitioners, however, contend that the First Amendment grants an immunity from arrest and prosecution to newsmen engaged in such an endeavor. This contention is contrary to established First Amendment principles and is unwork-

able in that it would unduly interfere with the police power of the states.

First, nothing enunciated in the previous opinions of this Court regarding First Amendment principles supports the view that a newsperson is entitled to violate a state's criminal law simply because he or she is covering a news event. A newsperson "has no special privilege to invade the rights and liberties of others." Associated Press v. NLRB, 301 U.S. 103, 132-133 (1937).

In Zemel v. Rusk, 381 U.S. 1 (1965) the Court sustained the Government's refusal to validate passports to Cuba even though that restriction "render[ed] less than wholly free the flow of information concerning that country." Id., 381 U.S. at 16. The ban on travel was held to be constitutional and Chief Justice Warren, writing for the majority stated:

"[T]here are few restrictions on action which could not be clothed by ingenious argument in the garb of decreased data flow. For example, the prohibition of unauthorized entry into the White House diminishes the citizen's opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right. The right to speak and publish does not carry with it the unrestrained right to gather information." 381 U.S. at 16, 17. [Emphasis added].

In the interest of securing news or otherwise, "[n]ewsmen have no constitutional right of access to the scenes of the crime or disaster when general public is excluded, . . ." Branzburg v. Hayes, 408 U.S. 665, 684-685 (1972). In Branzburg v. Hayes, supra, 408 U.S. at 684, this Court noted that:

"[i]t has been generally held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally."

Pell v. Procunier, 417 U.S. 817 (1974), and Saxbe v. Washington Post Co., 417 U.S. 843 (1974) involved First Amendment challenges to regulations that prevented reporters from conducting interviews with individually selected inmates of a prison. The Court held that the restriction on a journalist's newsgathering ability was constitutional in both cases. See also, Zurcher v. Stanford Daily, 436 U.S. 547 (1978), where the Supreme Court held that newsrooms were entitled to no greater protection than any other premises with regard to a search warrant seeking evidence of a crime.

In Houchins v. KQED, Inc., 438 U.S. 1 (1978), a radio and television broadcaster had been refused permission to inspect and photograph a particular portion of a jail in which alleged prisoner abuses occurred and in which an inmate

had committed suicide. This Court upheld the denial of access to the jail and stated that the freedom role of the press in informing the public contains only a freedom to communicate information after it had been obtained. Id., 438 U.S. at 9. Furthermore, the Court, relying on its previous decisions, stated:

"Under our holdings in Pell v. Procunier, supra, and Saxbe v. Washington Post, supra, until the political branches decree otherwise, as they are free to do, the media have no special right to access to the Alameda County Jail different from or greater than that accorded the public generally." 438 U.S. at 15-16.

Recent cases of the United States Supreme Court have not retreated from that holding. The media is not to be accorded special access that the general public would not be entitled to. In Gannett Co. Inc., v. De Pasquale, 443 U.S. 368 (1979), the Supreme Court upheld the authority of a state trial court to bar members of the public and the media from access to pretrial proceedings in a criminal case. In Richmond Newspapers, Inc. v. Commonwealth of Virginia, 448 U.S. 555 (1980), the Court distinguished its ruling in Gannett by holding that the public and the media were entitled to attend criminal trial under the guarantees of the First Amendment. However, the Court again did not grant any greater

right of access to the press than the general public. Chief Justice Burger explained the rationale behind the decision as follows:

" . . . a trial court room also is a public place where the people generally- and the representatives of the media- have a right to be present, and where their presence historically has been thought to enhance the integrity of quality of what takes place." 448 U.S. at 578.

The exercise of First Amendment rights have consistently been held to be subject to reasonable time, place and manner restrictions. See, Adderley v. Florida, 385 U.S. 39 (1966), where a conviction for trespass involving a demonstration upon jail grounds was upheld against First Amendment claims; and Lloyd Corp. v. Tanner, 407 U.S. 551 (1972), where the Supreme Court upheld the right of a privately owned shopping center to exclude draft and war protesters from those premises, even though the shopping center was generally open to the public. The government, as well as private entities, is entitled to restrict access to its property. United States Postal Service v. Council of Greenburgh Civil Associations, 453 U.S. 114, 129-130 (1981); Greer v. Spock, 424 U.S. 828, 836 (1976).

Since the Petitioners are not contending that the demonstrators had a First Amendment right to assemble on the property where they were

arrested, the press can claim no greater rights in this context than other citizens who were arrested.

The law in this country does not favor privileges. See, Branzburg v. Hayes, supra (news-persons not entitled to withhold subpoenaed material from grand jury notwithstanding his claim that disclosure would destroy his informant sources).

The Petitioners have set forth numerous factors which they contend demonstrate the purity of their motives and thus entitle them to immunity from arrest for trespass (Petition, p. 11). The very complexity of this formula demonstrates the unworkability of their proposal as opposed to the State's interest in maintaining order in the face of a mass demonstration.

A law enforcement officer attempting to control a crowd during a protest demonstration must be free to make instant decisions concerning who is violating the law. If, as the Petitioners suggest, a newsperson's motives and intent are to be weighed before he or she could be arrested, an officer would be placed at a critical disadvantage when attempting to arrest lawbreakers during a demonstration. Would the officer be required to take the person's word that he or she was trespassing merely to report concerning other person's breaking of the law? How would

the officer know whether the newsperson was participating in the protest themselves? Furthermore, who qualifies as a newsperson?

The myriad questions which would have to be answered in the context of a civil disturbance make the Petitioners' proposal totally inconsistent with efficient crowd control. It is not hard to visualize 42 U.S.C. § 1983 lawsuits being filed against law enforcement officers who arrested persons who claimed immunity from arrest as newspersons.

In recent years this Court has specifically stated its desire to simplify rules of arrest, search and seizure for law enforcement officers. United States v. Ross, 456 U.S. 798, 803-804 (1982). The new First Amendment principle urged by the Petitioners would unnecessarily complicate the doctrine of arrest, search and seizure in this area.

Finally, in order to uphold the Petitioners' contentions, this Court would be required to engraft a new specific intent requirement onto State trespass statutes.

Title 21 O.S.1971, § 1835(a), the trespass statute under which the Petitioners were convicted, is a general intent statute. Stahl v. State, 665 P.2d 839, 840 (Okla.Cr. 1983). It requires only that a person "willfully" enter the yard or enclosed field of another. Title 21



O.S.Supp.1979, § 92 stated that when an act is "[w]illfully" committed, "[i]t does not require any intent to violate the law." If the Petitioners' thesis were adopted in trespass cases the State would have to prove not only that a person who qualifies as a "newsperson" entered upon another's land illegally, but that they did so with the specific intent to violate the law.

Other unanswerable questions abound. Would a private citizen whose home had been burglarized be able to exclude the press from entry into the home to report on the arrest of the burglar and the investigation of the crime scene? Or could the reporter contend that since he or she had no intent to break the law that they had the right to remain at the crime scene until the newsworthiness of the event had ended?

The State responds to these questions and to the contentions of the Petitioners by stating that all persons, including newsmen should be held to be accountable for violations of the criminal law pertaining to trespass to the same degree that other citizens are.



CONCLUSION

For the reasons stated, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,  
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